

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

HUGO VILLARREAL-SOLIS,

Petitioner,

v.

**CIVIL ACTION NO.: 3:23-CV-2
(GROH)**

ACTING WARDEN D. ROANE, FCI Gilmer,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. ECF No. 14. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule of Prisoner Litigation Procedure 2, this civil action was referred to Judge Trumble for submission of a proposed R&R. Judge Trumble issued an R&R on May 4, 2023, recommending that the Petitioner’s Petition for Habeas Corpus [ECF No. 1] be denied and dismissed without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a de novo review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and of the Petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91,

94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of the Petitioner being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Petitioner accepted service of the R&R on May 8, 2023. ECF No. 15. Upon motion of the Petitioner, the Court granted the Petitioner an extension to June 12, 2023, to file his objections. ECF Nos. 16,17.


As of the date of this Order, no objections have been filed. On June 5, 2023, the Petitioner filed a one-sentence motion titled "Motion to Strike for Lack of Evidence," requesting that this Court "strike said Motion, because Petitioner has not exhausted his remedies." ECF No. 19. The Petitioner does not identify the motion he wishes to strike, but he appears to agree with the magistrate's finding in the R&R that he failed to exhaust all administrative remedies available to him before pursuing his claim in federal court. Therefore, after allowing additional time for transit in the mail, the Court finds that the deadline for the Petitioner to submit objections to the R&R has passed without submission. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 14] should be, and is hereby, **ORDERED ADOPTED**. For the reasons more fully stated in the R&R, the Court **ORDERS** that the Petitioner's Petition [ECF No. 1] be **DISMISSED WITHOUT PREJUDICE** and the Respondent's Motion to Dismiss [ECF No. 8] be **GRANTED**. The Court **FURTHER ORDERS** that the Petitioner's Motion to Strike for Lack of Evidence [ECF No. 19] be **DENIED as MOOT**.

The Clerk of Court is **DIRECTED** to **STRIKE** this case from the Court's active

docket. The Clerk is **FURTHER DIRECTED** to mail a copy of this Order to the pro se Petitioner by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: July 14, 2023


GINA M. GROH
UNITED STATES DISTRICT JUDGE